IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11230 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SALIMKHAN ALIAS BATIE ALIAS KALISO RASIDKHAN PATHAN

Versus

STATE OFGUJARAT

Appearance:

1. Special Civil Application No. 11230 of 2002

MS SUBHADRA G PATEL for Petitioner No. 1

MR MK PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/03/2003

ORAL JUDGEMENT

#. Leave to correct the title, as, according to the learned advocate for the petitioner, the correct name of the petitioner is Salimkhan @ Batlo @ Kalio. Permission to correct the name of the petitioner is accordingly

granted.

#. By filing this petition, the petitioner-detenu has challenged the detention order dated 1.9.2002 by which he is detained under the provisions of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short) as a "bootlegger".

#. Along with the detention order, the detenu was served with the grounds of detention. In the said grounds, there is a reference about one criminal case, which is pending against the petitioner under the provisions of the Bombay Prohibition Act. The authority, after having been satisfied about the illegal activities of the petitioner, has detained the petitioner under the preventive detention.

#. At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that, the solitary case against the petitioner is of 29.6.2002, however, there is a delay of more than two months in passing the detention order. For that purpose, learned advocate for the petitioner has placed reliance on the decision of this Court (Coram: H.K.Rathod,J) given in Special Civil Application No.13125 of 2000 wherein this Court has considered the aspect of delay in passing the detention order. This Court in para 9 has observed as under :

> "In light of the observations made by this Court in two decisions and considering the facts that there was one month delay in passing the detention order from the last offence registered on 5th October, 2000 which remained unexplained and non-supply of the relevant documents which had been taken into account by the detaining authority while passing the detention order and in spite of the demand made by the petitioner, the same have not been supplied and therefore, it adversely affected the legal and fundamental rights of the detenu for making effective representation under Art.22(5) of the Constitution of India. Therefore, the order of detention dated 6th November, 2000 is required to be set aside."

This ground is taken in para 10 of the petition. However, there is no reply at all from the State Government or from the detaining authority explaining the delay. Since the averments made in this petition are not denied by filing the affidavit-in-reply, the same are

required to be accepted. Mr.Patel, however, relied upon the fact that the statements were recorded at later point of time. However, the authority is required to be explained the delay by filing the affidavit-in-reply, which has not been done in the present case and the averments made in this petition have gone uncontroverted.

#. In view of what is stated above, this petition is allowed. The order of detention dated 1.9.2002 is quashed and set aside. The detenu Salimkhan @ Batlo Kalio Rasidkhan Pathan is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

#. It is submitted by the learned advocate for the petitioner that, at present, the petitioner-detenu is in Jamnagar Jail. Writ also be sent to the Jail Authority at Jamnagar.

(P.B.Majmudar,J)
(pathan)